Hussin Mohd Ali v Ho Kay Tat & Anor

HIGH COURT (KUALA LUMPUR) — SUIT NO S6–22–38 OF 2001
AZMEL J
31 DECEMBER 2003

Tort — Defamation — Libel — Newspaper articles — Whether publication of articles defamed plaintiff — Whether defence of fair comment proved — Whether words complained of were comments — Whether of public importance — Whether based on proven facts

The plaintiff sued the defendants for damages including aggravated and/or exemplary damages, as well as for injunction and costs for libel contained in two articles published by the defendants in the daily newspaper, *The Sun.* At the material time, the plaintiff was the general manager of Sepang International Circuit Sdn Bhd ('SIC'). The second defendant was the owner and publisher of *The Sun* and the first defendant, the editor-in-chief. It was the plaintiff's claim that the defendants had defamed him by the publication of the said two articles. The construction of the Sepang International Circuit was the venue for Malaysia's motorsports, the first success being the Formula One Race whereby SIC was awarded the best organizers. However, the subsequent two events that it conducted did not appear to be as successful as the event of the Formula One Race and it was extensively criticized by the newspapers. It was contended by the plaintiff that with the publication of the said articles in *The Sun*, the defendants had falsely and maliciously written, printed and published words which were defamatory against the plaintiff as there was a natural implication of the first article that the plaintiff as the general manager of the SIC was responsible for the three problems described in the first article and that he was incompetent to hold office as the general manager of the SIC. The defendants argued that the plaintiff as the general manager was to be accountable for the problems, and not that he was personally be blamed for them. Further, there was no suggestion or inference that the plaintiff was incompetent. Being held accountable would not be the same as being incompetent. Further, the three problems reported in the first article did occur and the replacement of the plaintiff as general manager did take place. Therefore, the defendants were justified to make such comments. Apart from that, the defendants also pleaded defence of fair comment on matters of public importance.

Held, dismissing plaintiff's claims with costs:

(1) The defence of fair comment on a matter of public importance consists of four elements, namely: (i) the words complained of are comments, although it may consist or include inference of facts; (ii) the comment is a matter of public importance; (iii) the comment is based on facts; and (iv) the comment is one which a fair-minded person can honestly make on the facts proved (see para 17).

(2) Regarding the first element, the gist of the plaintiff's complaint was not about the words actually used but the natural and ordinary meaning of the articles read as a whole. Opinions and also inference or deduction of facts can amount to a comment. The implications that the plaintiff

complained of were clearly comments in the sense of being inferences of opinion or conclusion drawn from those facts. They contained the defendant's belief or conclusion based on or drawn from the established facts (see paras 18-19).

(3) As to the second element, there was no doubt that the SIC and the position of the plaintiff was a matter of public importance. Events that were held in the SIC attracted public interest not only locally but also internationally. Even the Prime Minister had shown great interest in SIC and had attended some of the events held there (see para 20).

(4) Referring to the third element, the plaintiff had not disputed the material allegation of facts in the said articles. As such, the comments made by the defendants were based on actual facts (see para 22).

(5) There were no denials to the truth of the existence of the three problems of SIC. The plaintiff was responsible for incidents occurring in SIC. It would not be unreasonable to comment that the plaintiff should be held accountable for the said problems. Therefore, based on the facts, comments made by the defendants were honest and in absence of malice. If the facts had been inaccurately published, it was mainly due to the unwillingness of the plaintiff and the staff of SIC to give the relevant information sought by the defendant. Thus, the defendant had succeeded in establishing a defence of fair comment on a matter of public importance (see paras 25-26).

[**Bahasa Malaysia summary**

Plaintif telah menyaman defendan-defendan untuk ganti rugi termasuklah ganti rugi teruk dan/atau teladan, dan juga untuk injunksi dan kos untuk libel yang terkandung dalam dua artikel yang diterbitkan oleh defendan-defendan dalam akhbar harian, *The Sun*. Pada masa matan, plaintif adalah pengrus besar Sepang International Circuit Sdn Bhd ('SIC'). Defendan kedua adalah pemilik dan penerbit *The Sun* dan defendan pertama, ketua editor. Adalah dakwaan plaintif bahawa defendan-defendan telah memfitnah beliau dengan penerbitan dua artikel tersebut. Pembinaan Sepang International Circuit adalah tempat untuk sukan motor Malaysia, yang pertama berlangsung dengan jayanya iaitu Formula One Race di mana SIC telah diawardkan sebagai penganjur terbaik. Namun begitu, dua perlumbaan berikutnya yang berlangsung tidaklah begitu berjaya seperti perlumbaan Formula One Race dan ia telah dikritik dengan meluas di akhbar-akhbar. Adalah hujah plaintif bahawa dengan penerbitan artikel-artikel tersebut dalam *The Sun*, defendan-defendan telah secara tipu dan niat jahat menulis, mencetak dan menerbit perkataan-perkataan yang berunsur fitnah terhadap plaintif kerana terdapat implikasi semula jadi berdasarkan artikel pertama bahawa plaintif sebagai pengurus besar SIC adalah bertanggungjawab untuk tiga permasalahan yang dibentangkan dalam artikel pertama dan bahaw beliau adalah tidak kompeten untuk memegang jawatan sebagai pengurus besar SIC. Defendan-defendan berhujah bahawa plaintif sebagai pengurus besar adalah bertanggungjawab terhadap masalah-masalah tersebut, dan beliau tidaklah dipersalahkan secara peribadi untuk

masalah-masalah tersebut. Tambahan pula, tiada cadangan atau inferens bahawa plaintif adalah tidak kompeten. Untuk menjadikan seseorang itu bertanggunjawab tidak sama seperti menjadikannya tidak kompeten. Tambahan pula, ketiga-tiga masalah yang dilaporkan dalam artikel pertama memang berlaku dan pengganti plaintif sebagai pengurus besar memang wujud. Oleh itu, defendan-defendan dijustifikasikan untuk membuat komen sedemikian. Selain daripada itu, defendan-defendan juga memplidkan pembelaan komen berpatutan berhubung perkara-perkara kepentingan awam.

Diputuskan, menolak tuntutan plaintif dengan kos:

(1) Pembelaan komen berpatutan mengandungi empat elemen, iaitu: (i) perkataan-perkataan yang diadukan adalah komen-komen, walaupun ia mengandungi atau termasuklah inferens fakta; (ii) komen tersebut adalah perkara kepentingan awam; (iii) komen tersebut adalah berdasarkan fakta; dan (iv) komen tersebut adalah di mana seorang yang waras boleh dengan jujur buat berdasarkan fakta-fakta yang dibuktikan (lihat perenggan 17).

(2) Berhubung elemen pertama, inti pati aduan plaintif bukanlah mengenai perkataan-perkataan sebenar yang digunakan tetapi maksud semula jadi dan biasa artikel-artikel tersebut bila dibaca secara keseluruhan. Pendapat dan juga inferens atau pemotongan fakta-fakta boleh menbentuk satu komen. Implikasi-implikasi yang plaintif adukan dengan jelas merupakan komen-komen dalam erti kata ianya merupakan inferens pendapat atau kesimpulan yang diperolehi daripada fakta-fakta tersebut. Ia mengandungi kepercayaan atau kesimpulan defendan berdasarkan atau didapati daripada fakta-fakta yang telah dibuktikan (lihat perenggan 18-19).

(3) Berhubung elemen kedua, tiada keraguan bahawa SIC dan kedudukan plaintif adalah perkara kepentingan awam. Perlumbaan-perlumbaan yang berlangsung di SIC telah menarik kepentingan awam bukan sahaja secara tempatan tetapi juga antarabangsa. Perdana Menteri juga telah menunjukkan minat dalam SIC dan telah menghadiri beberapa perlumbaan yang berlangsung di sana (lihat perenggan 20).

(4) Behubung elemen ketiga, plaintif tidak dipertikaikan tentang pengataaan material fakta-fakta dalam artikel-artikel tersebut. Oleh itu, komen-komen yang dibuat oleh defendan-defendan adalah berdasarkan fakta-fakta sebenar (lihat perenggan 22).

(5) Tiada penafian tentang kebenaran wujudnya tiga masalah SIC tersebut. Plaintif adalah bertanggungjawab untuk kejadian-kejadian yang berlaku di SIC. Bukanlah tidak munasabah untuk membuat komen-komen bahawa plaintif patut dipertanggungjawabkan untuk masalah-masalah tersebut. Oleh itu, berdasarkan fakta-fakta, komen-komen yang dibuat oleh defendan-defendan adalah dan berniat jahat. Jika terdapat ketidaktepatan dalam fakta-fakta yang diterbitkan ia dilakukan terutamanya disebabkan keengganan plaintif dan pekerja SIC untuk memberikan maklumat relevan yang diminta oleh defendan. Oleh itu, defendan telah berjaya membuktikan terdapat satu pembelaan komen berpatutan berhubung perkara kepentingan awam (lihat perenggan 25-26).]

Notes

For cases on libel, see 12 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 314–434. For libel generally, 5 *Halsbury's Laws of Malaysia* paras [80.110]–[80.113].

Cases referred to

Jeyaretnam v Goh Chok Tong [1989] 1 WLR 1109 (refd)
Silkin v Beaverbrook [1958] 2 All ER 516 (refd)

Chan Tse Yuen (Ronnie Wong Chun Yiam and Haniza Abdul Rani with him) (Chan Tse Yuen & Co) for the plaintiff.
N Nadkarni (Azman Thaiyub Khan with him) (Lee Hishammuddin) for the defendants.

Azmel J:

[1] The plaintiff's claim against the two defendants were for damages including aggravated and/or exemplary damages, as well as for injunction and costs for libel contained in two articles published by the defendants in the daily newspaper, *The Sun*. The said articles appeared in the sports column of *The Sun* in its 27 April 2000 and 28 April 2000 issues. For purpose of convenience, the full text of the said articles are herewith reproduced.

[2] The first article published on 27 April 2000 states:

SHAKE-UP AT SEPANG INTERNATIONAL CIRCUIT?

After 16 months in operation, things are definitely not looking good for Sepang International Circuit (SIC), home of Malaysia's motorsports.

First of all, there was — and still is — the problem of the results of the Proton International Merdeka 300km which was held last August.

And then there was the pitiful attendance at the Malaysian Motorcycle Grand Prix early this month, which was witnessed by Prime Minister Datuk Seri Dr Mahathir Mohamad.

And lastly, there was the 10,000 Swiss francs (RM24,000) fine slapped by the International Motorcycling Federation (FIM) for disregarding racing instructions in course of staging the Malaysian Motorcycle GP from March 31–April 2.

And all of these things happening in less than a year.

One wonders how a RM320 million world class circuit which won the prize for 'The Best Organisers for 1999's Formula One Race' has been reduced to this state.

The latest development, according to motorsports insiders, things are set to change in the SIC with owners Malaysian Airports Berhad chairman Tan Sri Basir Ismail expected to wield the dreaded axe.

The first change is rumoured to be an infusion of new blood into the management, with the current general manager Hussin Mohd Ali likely to be replaced by marketing and sponsorship manager Anis Zuhani Ahmad.

Apparently, Basir is calling for a meeting with SIC staff tomorrow when he will inform them of the latest development.

[3] And the second article published on 28 April 2000 states: **A**

> Status quo as SIC quash talk of change
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> 1 PETALING JAYA, Thurs: Contrary to speculation within the motorsports fraternity, Sepang International Circuit national press officer Azhar Ghazali denies that there will be any changes in their management when contacted today.
>
> 2 Word has it that SIC marketing and sponsorship manager Anis Zahani Ahmad will replace general manager Hussin Mohd Ali but when pressed on whether there will be any changes in the near future, Azhar replied: 'You can't ask me that.' **B**
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> 3 Attempts to contact Anis, Hussin and SIC owners Malaysia Airports Berhad chairman Tan Sri Basir Ismail were met with royal brush offs. According to insiders the changes may not be all that drastic as it is believed that Hussin may not be axed but made events director. **C**

[4] At the material times, the plaintiff was the general manager of Sepang International Circuit Sdn Bhd ('SIC'). The second defendant is the owner and publisher of *The Sun* and the first defendant at the material times was the editor-in-chief. It was the plaintiff's claim that the defendants had defamed him by the publication of the said two articles. **D**

[5] The brief facts of this case are as follows.

[6] The construction of the Sepang International Circuit, the venue for Malaysia's motorsports, was completed in 1998. It was a mammoth project with a construction cost of about RM320m. Its main purpose was to be one of the venues for the Formula One Race which is considered to be a world class event. In 1999, SIC had conducted such event for the first time. Because SIC had superbly managed and organized the said event, it was awarded the prize for being 'The Best Organisers for 1999's Formula One Race'. **E**

[7] SIC is owned by the Malaysian Airport Berhad ('MAB'). The plaintiff, an employee of MAB, was seconded as the general manager of SIC wef 1January 1999 to 6 August 2000. As the general manager, the plaintiff was responsible for the day-to-day operation of the circuit. He was also answerable to the Board of Directors of SIC for all actions and decisions involving SIC. **F**

[8] Because Formula One Racing event only takes place once a year at the SIC, the Board of Directors decided that at other times the circuit could be used to hold other racing events. Such other events that were conducted at SIC were the Proton International Merdeka 300km held in August 1999, and Malaysian Motorcycle Grand Prix held in early April 2000. However, the outcome of these two events did not appear to be as successful as the event of the Formula One Race. Instead of getting praises, SIC had been extensively criticized especially by the newspapers. *The Sun* published the impugned articles in its sports column on 27 April 2000 and secondly on the following day, 28 April 2000. **G** **H**

[9] In its first article, the defendants had said that SIC were no longer looking good. It gave three reasons for saying so: **I**

> First of all, there was — and still is — the problem of the results of the Proton International Merdeka 300 km which was held last August. And then there was

the pitiful attendance at the Malaysian Motorcycle Grand Prix early this month, which was witnessed by Prime Minister Datuk Seri Dr. Mahathir Mohamed.

And lastly, there was the 10,000 Swiss Francs (RM24,000) fine slapped by the International Motorcycling Federation (FIM) for disregarding racing instructions in course of staging the Malaysian Motorcycle GP from March 31–April 2. And all these things happening in less than a year.

[10] The said article went on to state:

The latest development, according to motorsports insides, things are set to change in the SIC with owners Malaysian Airports Berhad chairman Tan Sri Basir Ismail expected to wield the dreaded axe. The first change is rumoured to be an infusion of new blood into the management, with the current general manager Hussin Mohd Ali likely to be replaced by marketing and sponsorship manager Anis Zuhaini Ahmad.

Apparently, Basir is calling for a meeting with SIC staff tomorrow when he will inform them of the latest development.

[11] The gist of the content of the second article published on the following day states:

Word has it that SIC marketing and sponsorship manager Anis Zuhaini Ahmad will replace general manager Hussin Mohd. Ali but when pressed on whether there will be any change in the near future, Azhar replied: 'You can't ask me that.'

Attempts to contact Anis, Hussin and SIC owners Malaysian Airports Berhad chairman Tan Sri Basir Ismail were met with royal brush offs. According to insiders, the changes may not be all that drastic as it is believed that Hussin may not be axed but made events director.

[12] It was contended by the plaintiff that with the publication of the said articles in *The Sun* on 27 April 2000 and 28 April 2000, the defendants had falsely and maliciously written, printed and published words which were defamatory against the plaintiff. It was the plaintiff's complaint that the natural meaning of the articles are:

1 that the three problems at the SIC as mentioned in the first article were the Plaintiff's responsibilities; and

2 that the Plaintiff was incompetent to hold the office as the general manager of the SIC.

[13] In other words, the plaintiff contended that there was a natural implication from paras 7 and 8 of the first article that the plaintiff as the general manager of the SIC was responsible for the three problems described in the first article.

[14] However, the defendants did not agree with the plaintiff's contention and denied that that was the natural meaning of the articles. It was strongly argued by the defendants that on a proper reading of the first 6 paras of the first article the blame was not at all on the plaintiff but squarely on the SIC. Hence, the import of the subsequent paras 7 and 8 was that the plaintiff as the general manager was to be accountable for the problems, and not that he personally be blamed for them. Further, there was no suggestion or inference from the articles that the plaintiff was incompetent. Being held accountable would not be the same as being incompetent.

[15] The defendants further contended that the three problems as reported in the first article did occur. And the replacement of the plaintiff as the general manager of the SIC did also take place. He was replaced by the chairman, Tan Sri Basir Ismail. Therefore, the defendants were justified to make such comments. That the replacement of the plaintiff took place a few months after the articles were published did not make them any less true.

[16] Apart from the above, the defendants also pleaded defence of fair comments on matters of public importance.

[17] The law as regards the defence of fair comment on a matter of public importance has been succinctly set out in the Singapore Privy Council case of *Jeyaretnam v Goh Chok Tong* [1989] 1 WLR 1109. At p 1112 of the decision the Privy Council laid down the four elements which the defence is required to prove in order to avail itself of such defence as follows:

(i) the words complained of are comments, although it may consist or include inference of facts;

(ii) the comment is a matter of public importance;

(iii) the comment is based on facts; and

(iv) the comment is one which a fair-minded person can honestly make on the facts proved.

[18] With regard to the first element, it is clearly stated in the pleadings, that the gist of the plaintiff's complaint was not about the words actually used, but what the plaintiff claims is the natural and ordinary meaning of the articles read as a whole. It is settled law that not only opinion but also inference or deduction of facts can amount to a comment (see *Jeyaretnam v Goh Chok Tong*).

[19] In this case, following the statement of facts in paras 2 to 4 of the first article, the implications that the plaintiff complained of are clearly comments in the sense of being inferences of opinion or conclusion drawn from those facts. They contained the defendant's belief or conclusion based on or drawn from the established facts.

[20] As to the second element, I had no doubt whatsoever that SIC and the position of the plaintiff in it, was a matter of public importance. Suffice it to say that events that are held in SIC attract public interest not only locally but also internationally. Even the Prime Minister had shown great interest in SIC and had attended some of the events held there.

[21] The third element deals with the question whether the comments were based on facts. This requirement had been clearly explained in the case of *Jeyaretnam v Goh Chok Tong* where Lord Ackner said:

> It is of course well established that a writer may not suggest or invent facts and then comment upon them, on the assumption that they were true. If the facts upon which the comment purports to be made do not exist, the defence of fair comment must fail. The commentator must get his basic facts right.

[22] In the instant case, it was not disputed by the plaintiff that the material allegation of facts in the said articles were true. As such, I had no difficulty in concluding that the comments made by the defendants were based on actual facts.

[23] The fourth and final element deals with the question whether the comment is one which a fair-minded person could honestly make on the facts proved.

[24] The issue here is whether the comment was honestly made. The question whether it was reasonably made does not arise. For as long as the defendants acted honestly and without malice, it does not matter if the comments were wrong or even exaggerated. The question that needs to be asked is whether there was honesty. And this principle is clearly stated in the case of *Silkin v Beaverbrook* [1958] 2 All ER 516, as follows:

> Freedom of speech, like the other fundamental freedoms, is freedom under the law, and over the years the law has maintained a balance between the rights of the individual, like the Plaintiff, whether he is in public life or not, to his unsullied reputation if he deserves it. That is on the one hand. On the other hand, but equally important, is the right of the public, which means you and me, and the newspaper editor and the man who, but for the bus strike, would be on the Clapham omnibus, to express his views honestly and fearlessly on matters of public interest, even though that involves strong criticism of the conduct of public people ...
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> So in considering this case, members of the jury, do not apply the test of whether you agree with it. If juries did that, freedom of speech, the right of the crank to say what he likes, would go. Would a fair-minded man holding strong views, obstinate views, prejudicial views, have been capable of making this comment? If the answer to that is yes, then your verdict in this case should be a verdict for the defendants. Such a verdict does not mean that you agree with the comment. All it means is that you think that a man might honestly hold those views on those facts.

[25] Applying the above principle to the instant case, I was fully satisfied that having regard to the fact that there were no denials to the truth of the existence of the three problems of SIC as published by the defendants in the first article coupled with the fact that the plaintiff as the general manager of SIC, was the chief executive officer in SIC and therefore responsible for whatever happening taken place in SIC, it would not be at all unreasonable to make the comments that the plaintiff should be held accountable for the said problems. The comments made by the defendants were honest based on the facts established. And there were no elements of malice whatsoever. If any inaccuracy in the facts were published that was done mainly due to the unwillingness on the part of the plaintiff and the staff of SIC to give the relevant information sought by the defendant.

[26] In the light of the above, I arrived at the conclusion that the defendant had succeeded in establishing a defence of fair comment on a matter of public importance. The defendants had clearly shown the existence of all the four elements of such defence.

[27] In passing, I would like to add the following remarks. It has become almost a common norm that anything that is newly implemented will have

to undergo a period of teething problems before achieving full perfection, if at all. The operation of the SIC is no exception. The events in SIC which attract international participants and spectators would certainly require to be perfectly administered. Needless to say that having good and efficient administration is one of the main factors that would ensure good attendance of events that are carried out in SIC. Good attendance would mean good income to SIC. And at the same time, it enhances Malaysia's good name worldwide as a very capable organizer of sporting events.

[28] With such objective, the management of SIC should always welcome whatever comments and constructive criticism concerning events that are carried out in SIC so that whatever shortcomings and defects could be rectified and further improved. It is also important that such defects should not be swept under the carpet. Hence, the role of the newspaper and the press become very important to publicize whatever defects and shortcomings that occurred during such events in order to give public awareness and at the same time to urge SIC to rectify such defects and shortcomings. That was more or less what appeared to have happened in this case.

[29] After having carefully considered the facts and circumstances of this case, I arrived at the conclusion that the comments made by the defendants were fair comments on matter of public importance. I therefore dismissed the plaintiff's claim with costs.

Plaintiff's claims dismissed with costs.

Reported by Ezatul Zuria Azhari